DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

E 06-222

February 21, 2007

ALTA M. TIERNEY

APPELLANT

V.

APPEAL FROM THE DEPARTMENT OF WORKFORCE SERVICES BOARD OF REVIEW

[NO. 2006-BR-01058]

DIRECTOR OF WORKFORCE SERVICES and
SIERRA NEVADA CASH REGISTER

APPELLEES

REVERSED AND REMANDED

Alta M. Tierney, formerly a support analyst and programer for Sierra Nevada Cash Register (SNCR), appeals from a decision of the Department of Workforce Services Board of Review denying her unemployment compensation benefits. On appeal, Tierney argues that the Board of Review erred in finding that she was discharged from her job on account of dishonesty. We agree and reverse and remand for an award of benefits.

At Tierney's hearing, company president Tom Yacuk testified that Tierney was hired in January of 2005 and terminated in May. He stated that immediately following her hire, Tierney was sent to Las Vegas on a three-month business trip. She was directed to send in expense statements for reimbursement. The company's procedure was to have managers in one of the SNCR offices approve the expense statements after a "cursory look" to facilitate reimbursement for the employee. The expense statements were then forwarded to the Reno

office where they were audited. According to Yacuk, Tierney was ordered to reimburse the company for alcohol that she had claimed on her expense account, which she did. She subsequently, however, claimed other non-allowable expenses such as over-the-counter medications and toiletries, which "we all know are not normal things that a company reimburses an employee that's traveling." At the hearing, Yacuk produced no written policy concerning what the company would reimburse the employee for and merely asserted that she should have known the company policy regarding expense statements because she was given the company handbook.

Tierney admitted that she turned in expense statements that contained items that the company would not reimburse her for, but she claimed that she did not do so intentionally. She stated that she submitted to Kathy Lewis, the Las Vegas office manager, the original cash-register receipts with all of her expense statements. Tierney disputed that she was ever told in advance "what was approved and what wasn't approved," and she "expected that if there was a problem, [her office manager] would mark it and deduct it." She stated that when Yacuk told her on April 17 that the company would not pay for liquor, she immediately wrote a check to reimburse SNCR for it. She also claimed that Kathy Lewis had informed her that the company would immediately cut her a check to purchase "whatever she needed," although Lewis and Yacuk denied that they had given Tierney such broad latitude in purchasing personal items.

Tierney submitted several receipts that had been submitted along with her expense statements. Some receipts showed that Tierney had marked out personal items that she did not intend to claim reimbursement for. Other receipts showed items such as cosmetics and over-the-counter drugs like Prilosec, which were included in the totals that Tierney submitted on her expense statement.

The Board of Review found that Tierney was terminated for dishonesty and disqualified her from receiving unemployment benefits. Tierney timely appealed that decision.

Tierney argues on appeal that the Board of Review erred in finding that she was terminated for dishonesty. She asserts that "nothing was ever turned in with the intent to scam or steal or be dishonest." She notes that she turned in all receipts and expected that the supervisor or manager that reviewed them would disallow any claimed items that were not appropriate. We find her argument persuasive.

On appeal, we review the findings of the Board of Review and will affirm if they are supported by substantial evidence. *Walls v. Director*, 74 Ark. App. 424, 49 S.W.3d 670 (2001). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Lovelace v. Director*, 78 Ark. App. 127, 79 S.W.3d 400 (2002).

Arkansas Code Annotated section 11-10-514(a)(1) (Repl. 2002) allows the Director of the Arkansas Department of Workforce Services to disqualify an individual for benefits if he or she is discharged from employment for misconduct connected with the work. Misconduct, as used in this section involves (1) disregard of the employer's interests, (2) violation of the employer's rules, (3) disregard of the standards of behavior that the employer has a right to expect of his employees, and (4) disregard of the employee's duties and obligations to his employer. *Walls v. Director*, *supra*. To constitute misconduct, more is required than mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies, ordinary negligence in isolated instances, or good-faith error in judgment or discretion; there must be an intentional or deliberate violation, a willful or wanton disregard, or carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. *Fleming v. Director*, 73 Ark. App. 86, 40 S.W.3d 820 (2001); *Love v. Director*, 71 Ark. App. 396, 30 S.W.3d 750 (2000).

Here we believe that Tierney, at worst, was negligent in the proper execution of her expense reports. We cannot conclude that she intended to defraud her company by her actions because she included the itemized receipts with all of her reports. The company was free to disallow any claim that it deemed not to be appropriate, which it clearly did with regard to the alcohol that Tierney claimed. Tierney's failure to be more diligent in deciding which items to submit for reimbursement can be excused in light of the fact that the company produced no written standards for deciding which items were appropriate.

In several respects, we believe that the instant case is analogous to *Maxfield v. Director, Arkansas Employment Sec. Dep't*, 84 Ark. App. 48, 129 S.W.3d 298 (2003), where this court reversed the denial of unemployment benefits where an employee was discharged for allegedly not following company rules regarding requests for sick and vacation leave despite representations by company officials that the claimant was aware of the procedure. In *Maxfield*, we did not simply rely on assertions by the company representative that the appellant was aware of the procedures, and we found the lack of written procedures to be instrumental in our decision. Likewise, in the instant case, Yacuk did not produce written directions for filling out the expense reports, but merely asserted that the disallowed items were expenses that "we all know are not normal things that a company reimburses an employee that's traveling." As in *Maxfield*, we hold that this does not constitute substantial evidence of company policy, and consequently we hold that violation of it does not qualify as misconduct.

Nor can we construe Tierney's conduct as falsifying a company document. The fact that she included the itemized receipts demonstrates her lack of intent to deceive. *Cf Snyder v. Director Employment Sec. Dep't*, 81 Ark. App. 262, 101 S.W.3d 270 (2003) and *Clark v. Director, Employment Sec. Dep't,* 58 Ark. App. 1, 944 S.W.2d 862 (1997). Finally, we note that when Tierney was made aware of what items the company would not reimburse her for, it is apparent from the testimony that she did not persist in listing them on expense reports. *Cf. Poff v. Everett,* 8 Ark. App. 83, 648 S.W.2d 815 (1983) (affirming the denial of benefits

due to misconduct where appellant, a retail store worker, fully aware that it was against company policy, wrote seven checks to her employer and asked the cashier to hold the check until she had funds to cover it. This practice, which was condoned by the previous store manager, was continued even after that manager had been replaced). Accordingly, this case is reversed and remanded for an award of unemployment benefits.

Reversed and remanded.

MARSHALL and HEFFLEY, JJ., agree.